1968 change, however, some federal credit unions, including petitioners' union, had their charters amended in the original language of the 1967 Amendment.

2. This case arises out of a dispute between petitioners and the Administration over the meaning of the 1967 Amendment prior to the 1968 change. The Administration originally chartered Forbes Credit Union in 1956 to serve civilian and military personnel employed at or permanently assigned to Forbes Air Force Base in Topeka, Kansas. In April 1967, soon after the availability of the 1967 Amendment had been publicly announced, Forbes applied for permission to adopt the Amendment. The Administration approved the application on May 5, 1967.

Petitioners claimed that, under a literal reading of the 1967 charter amendment, Forbes was entitled to enroll as credit union members any and all military personnel "eligible by law or regulations to receive benefits or services" from Forbes Air Force Base, regardless of whether they ever in fact received benefits or services. Under this interpretation, Forbes could enroll all military personnel located anywhere in the world, since all are theoretically "eligible" to receive benefits and services at any military base. The Administration, on the other hand, insisted that the 1967 Amendment extended Forbes' "field of membership" only to those persons who actually received benefits or services from Forbes Air Force Base.

Despite a warning from the Administration, Forbes determined to conduct business in accord with its expansive interpretation of the 1967 Amendment. In

May 1969, Forbes established an office at Sewart Air Forces Base in Tennessee, where it conducted extensive business and enrolled some 1,150 new members. While some of these new members were eventually transferred to Forbes Air Force Base, others were never transferred there and were eventually assigned to other military installations.

The Administration issued a "Notice of Charges" to petitioners on July 13, 1971, charging them with improperly expanding Forbes' membership. A Hearing Examiner upheld the Administration's position and ruled that petitioners were required to follow the Administration's interpretation of the 1967 Amendment (Pet. App. A18–A53). The Administrator adopted the Examiner's recommended decision and issued a cease-and-desist order applicable prospectively only (Pet. App. A15–A17).

3. The court of appeals affirmed the Administration's order. It held that the Administration's interpretation of the 1967 Amendment was compelled by "the statutory provision that a federal credit union shall serve a described territory [12 U.S.C. 1753(2), (5)] and that its members shall have a 'common bond,' one with the other [12 U.S.C. 1759], as that phrase has been consistently interpreted by the Administrator" (Pet. App. A13). The court noted that "no administrative body may contract with a corporate body which it regulates in a manner contrary to the statute which it is charged with administering" (Pet. App. A12), and that, in determining the meaning of a statute, great weight must be accorded to the

authoritative interpretation of the agency charged with administering it (Pet. App. A12–A13).

ARGUMENT

The court of appeals' decision is correct, and further review is not warranted.

1. Petitioners argue that the Administration's cease-and-desist order conflicts with the 1967 Amendment to Forbes' charter. The Hearing Examiner found, however, that the Administration's interpretation of the 1967 Amendment gives effect to the contemporaneous explanation which accompanied the Administration's first offer of the Amendment to the credit union industry (Pet. App. A39–A40). Under settled principles of contract law, the 1967 Amendment must be interpreted to conform with that explanation. See, *e.g.*, *Lloyd* v. *Grynberg*, 464 F. 2d 622, 624–625 (C.A. 10); *Boston & Maine R.R.* v. *Hall*, 284 F. 2d 474, 477–478 (C.A. 1), certiorari denied, 365 U.S. 817, 818; *Pacific Portland Cement Co.* v. *Food Machinery & Chemical Corp.*, 178 F. 2d 541, 552 (C.A. 9); Restatement of Contracts (Second), § 240, comment b (Tent. Draft No. 5, 1970); 3 *Corbin on Contracts*, §§ 543, 579 (1960).

Moreover, there can be no doubt of the Administration's authority to insist that petitioners abide by the agency's long-standing administrative interpretation of the statutory "common bond" requirement (12 U.S.C. 1759). The 1967 Amendment to Forbes' charter was necessarily subject to that limitation. See *Wood* v. *Lovett*, 313 U.S. 362, 370; *Home Building & Loan As-*

sociation v. *Blaisdell*, 290 U.S. 398, 429–430; *Von Hoffman* v. *City of Quincy*, 4 Wall. 535, 550. The Act contemplates that the Administrator will prescribe "rules and regulations" governing qualifications for credit union membership (12 U.S.C. 1759). The Administration's insistence that petitioners abide by the "common bond" limitation, as it had been consistently interpreted by the agency, is thus not an "impairment" of the 1967 charter amendment within the meaning of the Fifth Amendment.[4]

The Administration has long interpreted the "common bond" requirement to restrict the membership of credit unions located at military installations to persons who actually receive some benefits or services from the particular installation where the credit union is located. This interpretation furthers the purposes of the Act by encouraging direct local participation

[4] There is nothing to petitioners' claim (Pet. 17) that the Administration has inconsistently added the words "and are receiving" to the 1967 Amendment for some, but not all, credit unions. The Hearing Examiner found (Pet. App. A45–A46) that the 1967 Amendment had been approved for initial issuance to credit unions only in its amended form, with the words "and are receiving" added, after July 1967. The Administration "considers all fields of membership of DOD credit unions to be equal in scope in this regard, whether they contain the words 'and are receiving' or not * * *" (Pet. App. A46). For this reason, there is no merit in petitioners' suggestion (Pet. 7, 17) that the Administration acknowledged the validity of their interpretation of the 1967 Amendment when the agency's Regional Director assented in January 1970 to their request that the clarifying words "and are receiving" not be added to Forbes' charter (see Pet. App. A44.)

in credit union management.[5] See S. Rep. No. 555, 73d Cong., 2d Sess., p. 2. The contrary interpretation urged by petitioners, permitting the extension of credit union services to any and all military men located around the world, is at odds with established patterns of practice in the credit union industry and the Administration's authoritative interpretation of the meaning and purpose of the Act. Moreover, petitioners' claims of authority to operate world-wide are inconsistent with the requirement in 12 U.S.C. 1753(2) that a federal credit union serve a described territory.

2. Petitioners argue (Pet. 16–17) that the Administration's interpretation of the 1967 Amendment is, in effect, a charter amendment made contrary to the procedures in 12 C.F.R. 701.4. The agency's interpretation is not an amendment of the charter, however; it simply interprets the charter in accordance with the originally understood meaning and intention of the 1967 Amendment. Further, as noted above, the

[5] Petitioners complain (Pet. 19–20) that some early credit unions were granted expansive membership fields to provide needed credit union services to large and dispersed groups of military officers. The Hearing Examiner found (Pet. App. A44):

"* * * in the early days [these credit unions] were the only ones serving the military. Thus, these broad fields of membership were considered both necessary and in conformity with the occupational 'common bond' requirement of the Act."

The federal credit union industry has grown, and, with the development of credit unions at local military installations, it has become possible to provide adequate credit union services to military men while achieving the local control and participation in credit union affairs which Congress desired.

agency's interpretation constitutes a reasonable construction of the statutory requirement—to which the charter of Forbes Credit Union has always been subject—that membership in a federal credit union be limited to persons who have a "common bond" (12 U.S.C. 1759). The order enforcing the agency's interpretation does not in any way restrict or amend the authority conferred by the 1967 Amendment.[6]

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[6] Petitioners also claim (Pet. 18–19) that the Administration's interpretation cannot be upheld as an exercise of rule-making, since the agency did not follow the formal rule-making procedures of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.* This contention was not raised in the proceedings before the Administration or in the court of appeals. It is therefore not properly before this Court. *Lawn* v. *United States*, 355 U.S. 339, 362–363, n. 16; *Brown* v. *United States*, 411 U.S. 223, 230, n. 4. In any event, the contention is without merit.

The rule-making requirements of Section 4 of the Administrative Procedure Act, now 5 U.S.C. 553, do not apply where there is involved "a matter relating to * * * contracts." 5 U.S.C. 553(a)(2). Since the Administration's interpretation of the 1967 Amendment relates to a contract—*i.e.*, the Forbes charter (see *Dartmouth College* v. *Woodward*, 4 Wheat. 518)—it is excepted from Section 4 of the Administrative Procedure Act. See *Brown* v. *Housing Authority of the City of Milwaukee*, 471 F. 2d 63, 67–68 (C.A. 7); *Hahn* v. *Gottlieb*, 430 F. 2d 1243, 1247, n. 4 (C.A. 1). The agency's interpretation was enforced prospectively against petitioners only after they had been given a full adjudicatory hearing. The Hearing Examiner found that petitioners had long known of the agency's interpretation (Pet. App. A47), and there is no question that that interpretation is binding on petitioners. See, *e.g.*, *Kessler* v. *Federal Communications Commission*, 326 F. 2d 673, 689–690 (C.A.D.C.); *United States* v. *Aarons*, 310 F. 2d 341, 345–348 (C.A. 2); Davis, *Administrative Law Treatise*, § 6.10 (1958 ed.).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX

The relevant portions of the Federal Credit Union Act, 48 Stat. 1216, *et seq.*, as amended, 12 U.S.C. 1751, *et seq.*, provide:

§ 1753. *Federal credit union organization.*

Any seven or more natural persons who desire to form a Federal credit union shall subscribe before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state:

(1) the name of the association;

(2) the location of the proposed Federal credit union and the territory in which it will operate;

* * * * *

(5) the proposed field of membership, specified in detail;

* * * * *

Such organization certificate may also contain any provisions approved by the Administrator for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.

§ 1754. *Approval of organization certificate.*

The organization certificate shall be presented to the Administrator for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the pro-

posed Federal credit union. Upon approval of such organization certificate by the Administrator it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

§ 1759. *Membership.*

Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Administrator as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and the entrance fee; except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

§ 1766. *Certain powers of Administrator and Administration personnel.*

(a) The Administrator may prescribe rules and regulations for the administration of this chapter (including, but not by way of limitation, the merger, consolidation and dissolution of corporations organized under this chapter).

(b)(1) The Administrator may suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon his finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its bylaws, this chapter, or any regulations issued thereunder.

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